Interview with an Immigration Judge: John F. Gossart, Jr.

In 2014, Immigration Judge John F. Gossart, Jr. retired after more than 30 years on the bench. Judge Gossart sat in Baltimore, where he was well-known and well-liked by attorneys on both side of the aisle (I myself had many cases with him), and his absence is still felt in his Court. Aside from his judicial work, Judge Gossart was (and is) an adjunct professor of law and a legal educator in the wider community. The Asylumist caught up with Judge Gossart to ask about his career, some memorable moments, and his opinions on the issues of the day in Immigration Court:

[caption id="attachment_4564" align="alignright" width="300"] 
A photo of the official photo of Judge John F. Gossart, Jr. (it's the best we could do!).[/caption]

Asylumist: How did you get to be an IJ? And why was this position interesting for you?

John F. Gossart: I came to immigration law totally by accident. I wanted to work for the Department of Justice, in public sector law, and I applied for a position there. While I was waiting, I hung my own shingle and practiced law out of my house. When DOJ hired me to work at INS (the Immigration and Naturalization Service), I couldn't even spell immigration.

My first position there was as a Naturalization Attorney. At the time, applicants for naturalization had to file their petitions in U.S. District Court and present two character witnesses. I would interview the petitioner and the witnesses, and make recommendations about whether the applicant should be permitted to naturalize. I remember one Judge in the Eastern District of Virginia—"Roarin" Orin Lewis—who roared at all the attorneys. In those days, homosexuals were ineligible to naturalize because they were considered "sexual deviants." I argued for a grant of naturalization for an admitted homosexual because he abstained from sexual activities. The petition was denied by Judge Lewis. In another case involving two Russian "swingers" who had admitted to adultery, Judge Lewis called me into his chambers and read me the riot act. The two were consenting adults, but that didn't matter to Judge Lewis. He denied the case. At the time, the statute held that persons who committed adultery lacked good moral character.

Then, after a stint as Deputy Commissioner of Naturalization, I became a trial attorney for INS. Eight years later, I had the opportunity to become an Immigration Judge. On October 30, 1982, I was appointed an IJ by Attorney General William French Smith.

As an IJ, I rode circuit and heard cases in many locations: Baltimore, DC, Philadelphia, Pittsburg, Buffalo, Hartford. I loved the job. I enjoyed the challenge and I loved dealing with people. One concern for me was that the private bar might view me as a prosecutor in a judge's robe. On the other hand, sometimes when I ruled in favor of the respondent, people at INS complained that I had "crossed over." In fact, I don't think I played favorites; I just tried to follow the law. My mantra was to be "Fair, Firm, Decisive."

Asylumist: Are there any cases that you worked on that were particularly memorable?

JFG: I was the IJ in two Nazi war criminal cases. In the case of George Theodorovich the trial lasted 3½ weeks. He was a Ukrainian police officer who came to the U.S. under an executive order. He denied all charges and claimed that the case against him was a Russian plot. I went to the Russian embassy to review documents, and at trial, several Survivors testified. I entered a 154-page decision (my longest decision) where he was found deportable. He appealed to the BIA. While the case was on appeal, Theodorovich fled the U.S. and went to Paraguay.

Asylumist: As an IJ, what are some common problems that you see when lawyers present cases?

JFG: Dr. Stanley Sinkford, a renowned doctor and professor at Howard Medical School, always told his medical students, "Proper Preparation Prevents Poor Performance," meaning it is usually a lack of preparation that leads to problems. Some lawyers become too comfortable with their role; they think they can come into court and wing it. Also, proper vetting of clients and—more importantly—witnesses is very important. You cannot meet the witnesses 30 minutes before the hearing and hope everything goes well. I've also seen instances where the lawyer did not know the applicable law. This was a particular problem among lawyers who dabble in immigration law. A number of attorneys came before me who thought that the IJ has equity powers. They would ask the court to allow the respondent to stay in the U.S. even where there was no basis to allow him to stay. I fear that such lawyers portray this idea to their client—that the IJ can let you stay, even without a legal basis for relief.

Asylumist: How do you handle cases where you feel that the applicant may have relief, but lawyer errors and/or ineffective assistance of counsel might cause the alien to lose?

JFG: As an IJ, you almost never want to admonish an attorney in public; it is better not to be on the record or in the presence of the client. I have talked to lawyers in chambers, however. I've told them, "If you are not familiar with law, you need to become familiar. You have a duty to do your best for your client." Also, if I am aware that the client appears eligible for another form of relief, I will ask why the attorney is not pursuing it. Attorneys appreciate that a Judge is willing to talk to them in private.

Asylumist: Have you had cases where your gut tells you to rule one way, but the evidence requires that you rule the opposite way? How do you deal with that?

JFG: That is when a judge feels stressed, alone, and badly about the decision he must render. Such decisions are difficult; I suppose that's why we're paid the big bucks. But we are judicial officers, and we are required to follow the law. It's been said by the Supreme Court in *Knauf v Shaughnessy*, "Judicially we must tolerate what personally we regard as a legislative mistake," but that is our role as an administrative judge. Your gut may tell you one thing, and you may have sympathy for the person in front of you, but unless that person satisfies the requirements for relief under the law, you cannot get to discretion, and you cannot provide equitable relief. As a Judge, we have to make these kinds of difficult decisions. It is what the law requires. Ultimately, to do justice, you have to read, know, and follow the law.

Asylumist: Over the past couple years, we've heard reports about the problem of IJ burnout. Was that a factor for you? How did you protect yourself?

JFG: I was constantly assessing myself, and I remained on-guard for burnout. Whenever necessary, I took a recess from court, or I took a day off. My colleagues were very supportive in this regard; it was helpful to have someone to vent to.

EOIR recently held a conference in Washington, DC—the first live conference in five years. Such events are very important. Judges are able to bond with colleagues. They brought a psychologist to discuss stress.

Asylumist: What do you think EOIR could do differently to better support IJs and make the system more efficient?

JFG: First, we need more judges and this should be done promptly. Preferably, we need candidates with a strong immigration or judicial background. More than 50% of the IJ bench is currently eligible for retirement. So we need regulations for phased retirement and we need to implement the Moving Ahead for Progress Act This Act would permit IJs to work part time, which is something many IJs are interested in.

Also, we should institute senior status for IJs, so retired IJs could return to the bench to help with the workload. I had proposed this idea several years ago, but personnel felt it would be difficult to do. However, in the last year, EOIR has instituted a recall program, which allows Department of Justice attorneys with sufficient experience to fill temporary judgeships. This program seemingly targets BIA staff attorneys and OIL attorneys; it has not been extended to retired IJs. The Immigration Judges' Associationhas been advocating for senior status as well, so retired IJs could return to help address the backlog or cover for a Judge who is absent. Imagine how efficient it would be for someone like me to step in and work for a week or a month while another IJ was on detail or leave. We have a number of IJs who are retired. They have decades of experience and are willing and able to do this.

In addition, we need to provide courts with adequate support staff, and IJs need more administrative time to keep up with motions, read case law, and stay on top of the profession. Judges also need more training—one live conference in five years is not adequate.

I would also like to see implementation of the sanction recommendation that was part of the 1996 statutes. This would give IJs more authority to sanction attorneys for misconduct. They could impose fines. Some lawyers need this type of lesson as a wakeup call. If we are to implement a sanction process, it should apply equally to private attorneys and government counsel. DHS had wanted sanctions only against the private bar, but IJs generally oppose that idea—you have to treat both sides the same.

Asylumist: The definition of a particular social group ("PSG") has expanded pretty significantly in the last 20 years, mostly through litigation. What is your opinion of this? How do "flood gate" arguments influence IJ thinking regarding PSGs?

JFG: Since the 1980 Act came into effect, it has been litigated and litigated. I think this is healthy. PSG is the most difficult provision of the statute; other protected categories are more self-explanatory.

As to the flood gate argument, as an IJ, we cannot have that as a factor for consideration.

One area I struggled with was PSG cases involving domestic violence. We are still waiting for the government to issue regulations to help guide us. Maybe domestic violence cases would be better addressed through legislation instead of trying to fit them into a PSG, especially when we have such little guidance. Such cases are difficult because they are often very sympathetic. Perhaps it might be better to pass legislation to benefit the abused, rather than to try to figure out how to craft this group of abused individuals into a particular social group.

Asylumist: It seems fairly common for cases referred from the Asylum Office to the Court to be granted by IJs. Do you think this is a systematic problem? Might there be some sort of "fix" that could take place between EOIR and the Asylum Offices?

JFG: To do that, you would have to change the administrative asylum process, and this is a question of resources. When an asylum case is presented to the Asylum Office, there are no witnesses, there are time constraints, the applicants must bring their own interpreters (who may be good—or not). It is an imperfect system.

When the case is referred to Court, many applicants get a lawyer—and that makes a big difference. Attorneys know what evidence to include, they present witnesses, they can get a psychological evaluation. This evidence is often not presented at the Asylum Office. The system we have in Court is a more perfect system. But of course, we like the Asylum Office. Every case they grant is one less case on the Court's docket.

If you don't want applicants to get two bites at the apple, you can require asylum applicants who are out of status to go directly to Court.

Asylumist: Do you have any thoughts on how to reduce the backlog?

JFG: DHS could better prioritize which cases are prosecuted. We could have more pre-trial hearings. Why have a lengthy hearing if DHS won't oppose the case in the end? There could also be more stipulations and more administrative closures. Of course, there is always the issue of Monday-morning quarterbacking. What if a person whose case is admin closed commits a crime? The government does not have the resources to prosecute all cases, but how do we know which cases to pursue? I do think if DHS had more time for stipulations, it would ultimately save time for everyone.